

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER:

9 9 — 0 0 7

2. STATE:

Michigan

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

March 24, 1999

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

N/A

7. FEDERAL BUDGET IMPACT:

a. FFY 1999 \$ N/A

b. FFY 2000 \$ N/A

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

HCFA Preprint - HCF Pub. 17 06/95 "Survey, Certifications and Enforcement Regulation for Nursing Facilities" Preprint pp. 79c2, 79c3; attachment 4.35E, and 4.35H, p1;

p1-3 Supplement 1 to 4.35E, p1-13

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):

HCFA Preprint - HCF Pub. 17 06/95 "Survey, Certifications and Enforcement Regulation for Nursing Facilities" Preprint pp. 79c2, 79c3 attachment 4.35E, and 4.35H

p1-4

10. SUBJECT OF AMENDMENT:

Update Michigan's Enforcement System for Long Term Care Facilities.

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

James K. Haveman, Jr.

14. TITLE:

Director

15. DATE SUBMITTED:

3/31/99

16. RETURN TO:

Michigan Department of Community Health  
Medical Services Administration  
P.O. Box 30479  
Lansing, MI 48909-7979

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

3-31-99

18. DATE APPROVED:

6/6/01

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

3-24-99

20. SIGNATURE OF REGIONAL OFFICIAL:

*Cheryl A. Harris*

21. TYPED NAME:

Cheryl A. Harris

22. TITLE:

Associate Regional Administrator  
Division of Medicaid and Children's Health

23. REMARKS:

Revision: HCFA-PM-95-4 (HSQB)  
JUNE 1995

State/Territory: Michigan

Citation

c) Application of Remedies

42 CFR  
\$488.410

- (i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.

42 CFR  
\$488.417(b)  
\$1919(h)(2)(C)  
of the Act.

- (ii) The State imposes the denial of payment (or its approved alternative) with respect to any individual admitted to an NF that has not come into substantial compliance within 3 months after the last day of the survey.

42 CFR  
\$488.414  
\$1919(h)(2)(D)  
of the Act.

- (iii) The State imposes the denial of payment for new admissions remedy as specified in \$488.417 (or its approved alternative) and a State monitor as specified at \$488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR  
\$488.408  
\$1919(h)(2)(A)  
of the Act.

- (iv) The State follows the criteria specified at 42 CFR \$488.408(c)(2), \$488.408(d)(2), and \$488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR  
\$488.412(a)

- (v) When immediate jeopardy does not exist, the State terminates an NF's provider agreement no later than 6 months from the finding of noncompliance, if the conditions of 42 CFR 488.412(a) are not met.

(d) Available Remedies

42 CFR  
\$488.406(b)  
\$1919(h)(2)(A)  
of the Act.

- (i) The State has established the remedies defined in 42 CFR 488.406(b).

- ☒ (1) Termination
- ☒ (2) Temporary Management
- ☒ (3) Denial of Payment for New Admissions
- ☒ (4) Civil Money Penalties
- ☒ (5) Transfer of Residents; Transfer of Residents with Closure of Facility
- ☒ (6) State Monitoring

Attachments 4.35-B through 4.35-G describe the criteria for applying the above remedies.

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79c.3

Revision: HCFA-PM-95-4 (HSQB)  
JUNE 1995

State/Territory: Michigan

## Citation

42 CFR  
§488.406(b)  
§1919(h)(2)(B)(ii)  
of the Act.

(ii) ☒ The State uses alternative remedies.  
The State has established alternative  
remedies that the State will impose in  
place of a remedy specified in 42 CFR  
488.406(b).

- ☐ (1) Temporary Management
- ☐ (2) Denial of Payment for New Admissions
- ☒ (3) Civil Money Penalties
- ☐ (4) Transfer of Residents; Transfer of  
Residents with Closure of Facility
- ☐ (5) State Monitoring.

Attachments 4.35-B through 4.35-G describe the  
alternative remedies and the criteria for applying them.

42 CFR  
§488.303(b)  
1910(h)(2)(F)  
of the Act.

(e) ☒ State Incentive Programs

- ☒ (1) Public Recognition
- ☐ (2) Incentive Payments

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Attachment 4.19-D  
Section IV Page 24(b)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State of Michigan

POLICY AND METHODS FOR ESTABLISHING PAYMENT RATES  
(LONG TERM CARE FACILITIES)

3. **Payment Calculation and Phase-In Period; November 1, 1994, to November 30, 1996**  
The phase in period has a hold harmless provision for providers who participate. LTC (long term care) providers who earned a payment of less than 50% of the quality of care portion will be raised to the level of 50% during the phase-in period. When the phase-in period ends November 30, 1996, the hold harmless provision will expire. During the phase-in period new providers and new owners will have their payment calculated in accordance with existing policy on page 20 of Long Term Care Bulletin 94-11. The phase-in period ends November 30, 1996, and full implementation of CQIP will occur on December 1, 1996.  
  
Calculation of the incentive payment during the phase-in period will be done using the former Quality of Care/Volume Incentive method as described in Attachment 4.19D, Section IV, page 22 of the State plan. During phase-in the quality of care portion of the incentive payment will remain at the percentage earned based on the last survey prior to November 1, 1994, unless the provider was receiving less than 50%. (The methodology for determining the volume portion of the incentive payment will be the same as under the former program.)
4. **Evaluation and Reporting**  
Providers who choose to participate must provide the Medical Services Administration (MSA) with periodic reporting. These periodic reports from the facility must describe their Quality Improvement process and the Quality of Life projects. An interim report must be provided by April 30, 1995, and a Final Report by November 30, 1995. If the report is not filed the incentive amount will be removed from the provider's rate, effective June 1, 1995 for the interim report and effective January 1, 1996 for the Final Report. Providers may appeal the rate removal through the normal MSA appeals process. The appeals process is described in Attachment 4.19D, Section VIII, pages 1-8 of the State Plan. MSA will periodically compile a best practices report for CQIP to be distributed to the provider community.

Continuous Quality Improvement Program: Full Implementation  
Rate years beginning on or after 12-1-96

1. **Full Implementation of CQIP**  
Full implementation of CQIP will be effective with rate periods beginning on or after December 1, 1996. At that time providers will have to earn the incentive to receive any payment. A determination of the percentage of compliance with CQIP requirements will be made. Compliance will be determined in 25% increments from zero to 100%. Yearly project review responsibilities will be performed by a state selected entity, agency, or contractor. Specificity on the measurement and evaluation of incentive criteria is established in provider publications. Providers may appeal the determination through the normal MSA appeals process. The appeals process is described in Attachment 4.19D, Section VIII, pages 1-8 of the State Plan.
2. **Payment After the Phase In Period**  
**Class I Providers:** For rate periods beginning on or after December 1, 1996, payment will be at 3.23% of the provider's variable cost component or the variable cost limit, whichever is less, times the CQIP percentage. The percentage of payment will be based on yearly project review results of the CQIP.  
**Class III Providers:** For rate periods beginning on or after December 1, 1996, payment will be at 4.73% of the provider's variable cost component or the Class I variable cost limit, whichever is

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**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State of Michigan**

**POLICY AND METHODS FOR ESTABLISHING PAYMENT RATES  
(LONG TERM CARE FACILITIES)**

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less, times the CQIP percentage. The percentage of payment will be based on yearly project review results of the CQIP.

3. **Short CQIP Year and Transition**

The 1997-98 CQIP year is a short program year. The end of the program year has been changed from October 31, 1998 to May 31, 1998. During this seven month time frame facilities must begin and finish at least one complete project. This means that during the seven month time frame the facility must, for its project(s), begin and complete assessment, planning, implementation, and evaluation. The due date for the 1997-98 required final report(s) has been changed to June 15, 1998. Facilities who do not start and finish all four parts of at least one project during the short year will lose the incentive payment for at least 12 months, effective October 1, 1998.

A new program schedule begins in 1998-99. The 1998-99 program year changes from November 1 through October 31 to June 1 through May 31. This change in program year will allow the MSA to provide future payment for CQIP on a prospective basis.

E. **Excellence Recognition Program**

The nursing home quality incentive provides financial incentives for nursing homes that develop high quality care services. High quality care is defined as an approach involving facility measurements, analysis, activities, and/or systems to prevent, detect, or alleviate resident quality of care issue(s) or problem(s) before it manifests as a deficiency in the survey process. Eligibility to apply for this program is based on licensed bed capacity as of the beginning of the state fiscal year and survey results. A facility determined to have substandard quality of care in its last standard survey is not eligible.

Application must be made by the application date established by the Michigan Department of Consumer and Industry Services (MDCIS) and in accordance with the process and form developed by MDCIS. Awards for each facility will be made by MDCIS as soon as the application is approved. The amount of the award may or may not cover the entire cost of eligible activities. Medicaid funds will be used only for Medicaid certified beds. All other awards funds for non-Medicaid certified beds will come from State general funds. Unspent funds must be returned to MDCIS.

Application for the incentive is competitive. MDCIS determines acceptability and eligibility for award of the incentive. The three eligible areas are:

1. Activities to obtain the Michigan Quality Leadership Award (MCLA).
2. Innovative projects that improve the quality of care provided to residents in the facility
3. Activities to Implement the Eden Alternative.

Verification of expenditures and supporting documentation for the three eligible areas will be made as follows:

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: \_\_\_\_\_

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Civil Money Penalty: Describe the criteria (as required at 1919(h)(2)(A)) for applying the remedy.

Specified Remedy	<u>X</u> Alternative Remedy
(Will use the criteria and notice requirements specified in the regulation.)	Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

**Civil Monetary Penalty - Alternate Remedy**

The issuance of a civil monetary penalty (CMP) is a specified remedy in certain situations. The issuance of a CMP is determined by the presence of certain specified deficiencies. Facilities who are considered to be historically compliant or needing early review with possible date certain may be given a "date certain" before remedies, including CMP's, are applied. If the facility comes into substantial compliance before the date certain the civil monetary penalty (and other remedies) can be avoided. The "date certain" does not apply when Immediate Jeopardy exists, or if the facility is not allowed the opportunity to correct ("poor performer"). "Date certain" is not a facility right; the state has discretion on allowing "date certain." If the state Medicaid agency finds that a nursing facility currently meets the requirements, but previously was non-compliant, then the state Medicaid agency may impose a remedy, which includes a CMP, for the days it finds the facility was not in compliance. If the past non-compliance was egregious, then the state Medicaid agency will impose a CMP remedy. Menus one through six describe when a CMP must be assessed and when it is an option. The dollar range to be considered for the CMP is also included in each menu. Menu's one through six are included on pages one through fourteen of the Supplement to Attachment 4.35E.

Prior notice is not required before imposition of CMP's. Unless a date certain is allowed, a penalty equivalent to a one-day penalty will apply in all fineable circumstances even if the violation(s) is (are) immediately corrected. The daily CMP will end on the day prior to the determination of substantial compliance, or the day prior to the determination that a civil monetary penalty is no longer warranted. The state survey agency determines compliance. Installment schedules are not allowed for payment of the CMP. **Civil monetary penalties are not allowable Medicaid costs.**

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Enforcement of Compliance for Nursing Facilities

Continuing assessment of CMP's may cease when facility cooperation exists and one of the situations below occurs:

- the appointment of a receiver by a circuit court
- closure of a nursing facility as evidenced by the filing of a notice of discontinuance of operation with the Michigan Department of Consumer and Industry Services under section 21785 of Act no.368 of the Public Acts of 1978, as amended, being 333.21785 of the Michigan Compiled Laws.
- appointment of a temporary manager for the purpose of overseeing the orderly closure of the nursing facility

The situation described below requires imposition of a daily civil monetary penalty.

**Failure to Re-admit a Qualified Medicaid Resident**

A daily CMP of \$400 would be imposed when an enrolled Medicaid facility unlawfully refuses to re-admit a qualified Medicaid resident ("qualified" as defined by the Health Care Finance Administration) following hospitalization. This daily CMP would start on the date validated by the state survey agency that nursing facility readmission should have occurred. The daily \$400 penalty continues against the nursing facility until the resident is offered the next qualifying available Medicaid bed.

**Increase in Civil Monetary Penalty**

Daily CMP amounts will increase (be multiplied by a factor of 1.5) by fifty percent (50%) for repeat deficiencies. A "repeat deficiency" occurs when deficiencies in the same regulatory grouping of requirements are found again at the next survey. This 50% increase also applies when a facility has been found to have provided Substandard Quality of Care on the last three (3) consecutive standard surveys. Increases will not exceed the \$10,000 per day specified federal maximum.

**Use of Funds**

Money collected by MDCH (Michigan Department of Community Health) as a result of civil monetary penalties will be put into a special fund to be applied to the protection of the health and property of residents of any nursing facility that the State or HCFA finds deficient. Money withheld by the State from

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

— funds due from a facility (because of lack of payment of civil monetary penalties by the facility) will also be deposited in this fund.

**Demonstrate that the alternate remedy is as effective in deterring non-compliance.**

The remedy of a CMP is being used as specified in the regulation. The alternative portion is that the State of Michigan does not allow a repayment period, and therefore does not allow interest to accrue on the CMP. If the entire penalty amount is not voluntarily submitted by the due date it is recovered in total by gross adjustment against the facility's next available Medicaid warrant, therefore, interest is not allowed to accrue. Based on prior experience this alternative to the federal regulation of requiring collection of daily interest was found to be administratively simple, fine collection was not unduly delayed, and resolution of the deficient situation was swift. By not allowing facility's to delay penalty payment it reduces paperwork for the state and facility, does not require as detailed of a tracking system for CMP's (and/or interest rates) and encourages facilities to quickly direct their efforts and resources to obtaining and maintaining compliance and not on negotiating a long penalty repayment period.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities  
SUPPLEMENT 1 TO ATTACHMENT 4.35-E: MENUS 1-6

Menu 1

Facility not in substantial compliance

Historical classification: historically compliant or needing early review with date certain.

Scope and severity classification: D, E, G, F, H, or I if not SQC.

Survey type: standard or abbreviated.

Plan of correction: required.

No remedies; date certain opportunity to correct is given.

If substantial compliance is not achieved at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 1 (required for D and E levels; optional for F, G, H, and I levels):

Directed plan of correction.

Directed in-service training.

State monitoring.

Category 2 (required for F, G, H, and I levels; optional for D and E levels):

Denial of payment for new admissions.

Administrative advisor or clinical advisor or both.

Category 2 (optional):

A daily civil money penalty of \$50.00 to \$3000.00 per day.

Other:

Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order requiring appointment of a temporary manager or clinical advisor or both.

State patient rights penalties, if applicable.

Other licensure enforcement actions appropriate to the specific case, which may include a correction notice or order to ban admissions or readmissions or both.

Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Menu 2

If substandard quality of care is found at any survey

Historical classification: historically compliant or needing early review with date certain.

Scope and severity classification: H, I, or F.

Survey type\*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 1 (optional):

Directed plan of correction.

Directed in-service training.

State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order requiring appointment of an temporary administrative advisor or clinical advisor or both.

State patient rights penalties, if applicable.

Correction notice or order to ban admissions or readmissions. or both.

If SQC remains at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 2 (required):

Denial of payment for new admissions.

Administrative advisor or clinical advisor, or both

Category 2 (optional)

A civil money penalty of \$50.00 to \$3,000.00 per day.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Category 1 (optional):

- Directed plan of correction.
- Directed in-service training.
- State monitoring.
- Denial of payment for new admissions (required remedy for noncompliance at the ninetieth day)

State survey agency enforcement actions (1 or more may be accepted)

- Correction notice or order requiring appointment of a temporary manager.
- Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor or both.
- Correction notice or order to ban admissions or readmissions or both.
- Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
- State patient rights penalties, if applicable.
- Notice of intent to revoke license.

If a facility is not in substantial compliance at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 1 (required for D and E levels; optional for F, G, H, and I levels):

- Directed plan of correction.
- Directed in-service training.
- State monitoring.

Category 2 (required for F, G, H and I levels; optional for D and E levels):

- Denial of payment for new admissions.
- Temporary administrative advisor or clinical advisor, or both.

Category 2 (optional):

- A daily civil money penalty of \$50.00 to \$3000.00.

Other:

- Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

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SUPPLEMENT 1 to Attachment 4.35-E  
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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor or both.

State patient rights penalties, if applicable.

Other remedial enforcement actions appropriate to the specific case, which may include a correction notice or order to ban admissions or readmissions or both.

Transfer selected patients, reduce licensed capacity, or comply with specific requirements.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Menu 3

If immediate jeopardy is found at any survey

Historical classification: historically compliant or needing early review with possible date certain.

Scope and severity classification: J, K or L.

Survey type\*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 3 (required):

23-day termination of provider agreement.

Temporary manager.

Category 3 (optional):

A civil money penalty of \$3050.00 to \$10,000.00 per day.

Category 2 (optional)

Denial of payment for new admissions.

Administrative advisor or clinical advisor, or both.

Category 1 (optional):

Directed plan of correction.

Directed in-service training.

State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

Emergency order limiting, suspending, or revoking a license.

Correction notice or order to ban admissions or readmission's, or both.

Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order to requiring appointment of temporary administrative advisor or clinical advisor, or both.

State patient rights penalties, if applicable.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

If substandard quality of care remains at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 2 (required):

Denial of payment for new admissions.  
Administrative advisor or clinical advisor, or both.

Category 1 (optional):

Directed plan of correction.  
Directed in-service training.  
State monitoring.

Other

Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order requiring appointment of a temporary manager.  
Correction notice or order requiring appointment of temporary administrative advisor or clinical advisor, or both.  
Correction notice or order requiring a ban admissions or readmission's, or both.  
Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.  
State patient rights penalties, if applicable.  
Notice of intent to revoke license.

If a facility is not in substantial compliance at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 2 (required for F and G levels; optional for D and E levels):

Denial of payment for new admissions.  
Administrative advisor clinical advisor, or both.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Category 1 (optional):

- Directed plan of correction.
- Directed in-service training.
- State monitoring.

Other:

Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.

State patient rights penalties, if applicable.

Other licensure enforcement actions appropriate to the specific case, which may include a correction order, a notice to discontinue admissions or readmission's, transfer selected patients, reduce licensed capacity, or comply with specific requirements.

Notes for menus 1-3:

- Denial of payment for new admissions and state monitoring will be imposed if a facility has been found to have provided substandard quality of care on 3 consecutive standard surveys.
- Notice of termination for failure to achieve substantial compliance within 180 days is always included with notification of alternate remedies.
- Federal law, as specified in the social security act at section 1819(f)(2)(B) and 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility that, within the previous 2 years, has operated under a section 1819(b)(4)(C)(ii)(II) or section 1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey as a result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than \$5,000.00; has been subject to a denial of payment, the appointment of a temporary manager, or termination; or, in the case of an emergency, has been closed or had its residents transferred to other facilities, or both. Exceptions as specified in Public Law 105-15, "Permitting Waiver of Prohibition of Offering Nurse Aide Training and Competency Evaluation Programs in Certain Facilities" will apply.
- "Any survey\*" means an annual standard survey, abbreviated survey, or revisit survey. A standard survey includes both the health survey and life safety code survey findings.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Menu 4

Facility not in substantial compliance

Historical classification: poor performer or needing early review with no date certain.

Scope and severity classification: D, E, F, or G.

Survey type: standard or abbreviated.

Plan of correction: required.

Federally authorized enforcement remedies

Category 2 (required for classification F and G; optional for classification D and E):

Denial of payment for new admissions.

Administrative advisor or clinical advisor, or both.

Category 2 (optional)

A daily civil money penalty of \$50.00 to \$3,000.00.

Category 1 (optional for classification F and G; required for classification D and E):

Directed plan of correction.

Directed in-service training.

State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

Correction notice or order to ban admissions or readmission's, or both.

Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

Correction notice or order requiring appointment of a temporary manager.

Correction notice or order requiring appointment of temporary administrative advisor or clinical advisor, or both.

State patient rights penalties, if applicable.

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JUNE 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: \_\_\_\_\_

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

If substantial compliance is not achieved at the first or subsequent revisit:

Notice of intent to revoke license.

Denial of payment for new admissions (required federal remedy if noncompliance continues at the ninetieth day).

Additional enforcement action from menu 4.

Civil money penalty adjustment may occur if scope and severity change.

If substantial compliance is not achieved by the one hundred and eightieth day:

Termination, as required by federal law.

Request the state survey agency initiate receivership sale.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: \_\_\_\_\_

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Menu 6

Immediate jeopardy

Historical classification: poor performer or needing early review with no date certain.

Scope and severity classification: J, K, or L.

Survey type\*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 3 (required):

A civil money penalty of \$3,050.00 to \$10,000.00 per day and

23-day termination of provider agreement.

Temporary manager.

Category 2 (optional):

Denial of payment for new admissions.

Temporary administrative advisor or clinical advisor, or both.

Category 1 (optional):

Directed plan of correction.

Directed in-service training.

State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

Emergency order limiting, suspending, or revoking a license.

Notice of intent to revoke licensure.

Correction notice or order to ban admissions or readmission's, or both.

Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

Correction notice or order requiring temporary manager or requiring clinical or administrative advisor or both

State patient rights penalties, if applicable.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Notes for Menus 4-6:

- If a facility has met the federal definition of "poor performer," immediate imposition of remedies will occur during the current survey cycle using menu 4, 5, or 6 as appropriate to the level of noncompliance.
- Notice of termination for failure to achieve substantial compliance within 180 days is always included with notification of alternate remedies.
- If more than 1 menu is indicated by the survey findings, the highest appropriate menu will be applied.
- Federal law, as specified in the social security act at section 1819(f)(2)(B) and 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility that, within the previous 2 years, has operated under a section 1819(b)(4)(C)(ii)(II) or section 1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey as a result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than \$5,000.00; has been subject to a denial of payment, the appointment of a temporary manager, or termination; or, in the case of an emergency, has been closed or had its residents transferred to other facilities, or both. Exceptions, as specified in Public Law 105-15, "Permitting Waiver of Prohibition of Offering Nurse Aide Training and Competency Evaluation Programs in Certain Facilities" will apply.
- "Any survey\*" means an annual standard survey, abbreviated survey, or revisit survey. A standard survey includes both the health survey and life safety code survey findings.

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities  
Additional Remedies: Describe the criteria (as required at §1919(h)(2)(A)) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (i.e., category 1, category 2, or category 3 as described at 42 CFR 488.408).

**Public Notice- Additional Remedy**

This additional remedy will be used in conjunction with other federally specified remedies. When public notice is utilized, the state survey agency will issue it (under State licensure authority) using the process specified in part 333.21799b, section 21799b(1)(e) of the Michigan Public Health Code. When public notice is utilized the information will be published in a daily newspaper of general circulation in the area in which the nursing facility is located. The notice will include the action taken by the State and the conditions that caused the corrective action to be taken. The state survey agency will post notice of the corrective actions at the facility. Public Notice is a Category One remedy. Menus one through six are located on pages one through thirteen of the Supplement 1 to Attachment 4.35E, and describe when this Category One remedy is required and when it is optional.

**Temporary Administrative or Clinical Advisor or Both- Additional Remedy**

This additional remedy will be used in conjunction with other federally specified remedies. It is the responsibility of the temporary clinical or administrative advisor to mentor facility personnel. This includes but is not limited to:

- Counsel and teach clinical staff and administration regarding maintenance of compliance over time.
- Reinforce and support appropriate/optimal patterns of care.
- Specific duties of the advisor for each facility placement shall be outlined in a written agreement.
- If specific deficient practices affecting health and safety, not addressed in the written agreement, should occur during the appointment of the advisor it would be the responsibility of the advisor to work with the facility and licensing staff to address and correct those issues.

Menus one through six are located on pages one through thirteen of the Supplement 1 to Attachment 4.35E, and describe when this Category Two remedy is required and when it is optional.

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